IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No.8220 of 2005

Pramod Sitaram Paunikar — Petitioner

Vs.

State of Maharashtra & ors. — Respondents

Mr.R.K.Mendadkar and Ms.Helen K. Mandlik for petitioner.

Mr.R.D.Rane, Govt.Pleader for resp.nos.1 to 3.

CORAM: B.H.MARLAPALLE & J.H.BHATIA,JJ.

December 15, 2006.

ORAL ORDER (PER B.H.MARLAPALLE,J.)

1. Heard Mr.Mendadkar, the learned counsel for the petitioner who claims to belong to "Halba Scheduled Tribe" and the respondent no.2 - Scrutiny Committee has rejected the said claim by the impugned decision dated 21/11/2002.

2. The petitioner was granted caste certificate as belonging to Halba Scheduled Tribe on 25/6/1993 by the Executive Magistrate, Nashik and while appearing

for the HSC Science Examination the petitioner applied for verification of the Tribe's claim. The Committee by its earlier decision dated 30/6/1997 invalidated the caste certificate issued to the petitioner and the said order came to be challenge in Writ Petition No.2492 of 1998, which was decided by this Court on 23/12/1998 in terms of the minutes of order. The petitioner's caste claim was remanded so as to furnish a copy of the vigilance cell enquiry report and thereafter to hear the petitioner and decide the tribe claim as claimed by him. In the mean time the petitioner's admission to the Computer Science college was protected. The petitioner has recently completed the Master's Degree in Computer Science.

3. On remand the Scrutiny Committee made available to the petitioner a copy of the vigilance cell enquiry report. The petitioner was heard on the said report as well as on the social, linguistic and religious traits etc. Before the Committee the petitioner had submitted in all 13 documents and the Committee noted that the documents at Sr.Nos.1, 2, 4, 7, 9 and 11 were school record of the petitioner, his father, sister, brother and mother and in all these

documents the caste recorded was "Halba". As per the Committee all these documents pertained to the period from 1963 onwards. In addition the petitioner also relied upon the service certificate issued regarding his father's service in which it was stated that his caste was recorded as "Halba" in the service record. We have gone through these documents and as recorded by the Scrutiny Committee, all these documents pertained to the petitioner, his father, brother, sister and mother. The oldest document is of the year 1963 in respect of the petitioner's mother - Janabai. The Scrutiny Committee discarded all these documents.

4. Mr.Mendadkar, the learned counsel for the petitioner has challenged the impugned decision of the Scrutiny Committee mainly on two grounds viz. (a) the Committee failed to consider the affinity test in its right perspective and (b) the Committee did not advert to the fact that the petitioner's father Shri Sitaram Paunikar was all along shown to belong to the Halba Scheduled Tribe in his service record.

4A. The petitioner's father is in service as a

Compositor, Grade II under the Directorate of Printing at Nashik, Government of India. Admittedly the service book of the petitioner's father was not before the Committee nor was it applied to be called for by the petitioner before the Committee by way of evidence and the service book would have shown as to whether the father's caste was recorded as Halba right from the beginning or the caste entry was corrected subsequently. This is more relevant because in the Vigilance Cell enquiry it was revealed that the petitioner's father Shri Sitaram Paunikar was admitted in the Bangali Panja Marathi Primary School, Mahanagarpalika, Nagpur on 1/7/1960 and his caste was shown as "Koshti". The Vigilance Cell enquiry further revealed that the petitioner's grandfather (father's uncle) Shri Udaram was admitted in the Budhwari Marathi Primary School at Nagpur on 13/6/1933 and his caste was recorded as "Koshti". In addition Anna Mahadeo Paunikar i.e. Sitaram's brother was, as per the Vigilance Cell enquiry, admitted in the Budhwari Marathi Primary School at Nagpur on 29/7/1958 and his caste was shown as "Koshti". Sitaram's two younger brothers Waman and Narayan were also admitted in the Municipal School i.e. Mangalwari Primary School and in the school

record their caste was shown as "Koshti". In the personal hearing granted to the petitioner these documents could not be challenged nor the authenticity of the record showing that all these five members of the family being Koshti could be impeached. The socio-cultural traits, characteristics, religious festivals and customs which form part of the affinity test become relevant and significant more when the documentary proof regarding the caste claim and as recorded in the school registers or other similar public record is not available and in many cases, as is well known, such documents are not available mainly because the senior members of the family did not go to school. In addition recording in the register of birth and death as maintained in the villages is either absent or not traceable. In such cases the affinity test is one of the major factors which are required to be considered by the Scrutiny Committee. In the instant case the petitioner’s father, uncle and the grandfather were all admitted to schools and the first entry in the school record is of 13th June 1933 in respect of Sitaram’s uncle Udaram. Mr. Mendadkar, the learned counsel for the petitioner relied upon the decision in the case of State of

Maharashtra & ors. v. Ravi Prakash Babulalsing Parmar & anr. **[JT 2006 (10) SC 110]** and more particularly the following observations:

> "12. The Caste Scrutiny Committee is a quasi-judicial body. It has been set up for a specific purpose. It serves a social and constitutional purpose. It is constituted to prevent fraud on Constitution. It may not be bound by the provisions of Indian Evidence Act, but it would not be correct for the superior courts to issue directions as to how it should appreciate evidence. Evidence to be adduced in a matter before a quasi-judicial body cannot be restricted to admission of documentary evidence only. It may of necessity have to take oral evidence."

5. The State of Maharashtra has enacted the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 which received the assent of the President of

India and was published in the gazette of 23rd May 2001 and subsequently it was brought into force. The said Act now regulates not only the verification of the caste claims but also for the penal provisions and the bar of jurisdiction of Civil Courts etc. We have no doubt in our mind that the evidence that was placed before the Scrutiny Committee in terms of the record submitted or the Vigilance Cell enquiry, was of more probative value and right from 1933 to 1960 the caste of the petitioner's family members in the school record pertaining to different male members and of different years indicated as "Koshti". It is not for the Scrutiny Committee or for this Court to say that "Koshtis" are "Halbis" as it is well known that the entry in the Presidential Order has to be read as it is. Thus the appreciation of evidence of the school record as made by the Scrutiny Committee cannot be termed as perverse or grossly erroneous and, therefore, the reasoning in support of the findings recorded by the Scrutiny Committee in the impugned decision does not call for any interference at the hands of this Court.

6. Hence the petition is rejected summarily.

7. However, as the petitioner has already completed his education i.e. he has obtained the Master of Computer Sciences Degree and perhaps against a seat reserved, there is no question of his degree being recalled but at the same time the caste certificate having been cancelled, he shall not be entitled to claim any benefits of Scheduled Tribe in future.

(J.H.BHATIA,J.) (B.H.MARLAPALLE,J.)